

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAVLE ZIVKOVIC, on behalf of himself and
others similarly situated,

Plaintiff,

v.

LAURA CHRISTY LLC d/b/a VALBELLA,
LAURA CHRISTY MIDTOWN LLC, DAVID
GHATANFARD, and GENCO LUCA,

Defendants.

17-CV-00553 (GHW)

**PLAINTIFFS-JUDGMENT-CREDITORS' MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR AN ORDER TO SHOW CAUSE WHY RESPONDENT WEINER
LLC SHOULD NOT BE ORDERED TO COMPLY WITH A RULE 45 SUBPOENA**

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I. INTRODUCTION

Plaintiffs/Judgment-Creditors seek to enforce a post-judgment subpoena served on Weiner LLC, the accountant for a certain company, Oak Grove Road LLC (“OGR”). OGR owns part of Valbella at the Park LLC and it is partially owned by one of the Judgment-Debtors in this action. As part of their judgment collections efforts in this matter, Plaintiffs served Weiner LLC with a subpoena seeking, *inter alia*, documents in its possession concerning OGR, including that company’s tax returns and profit and loss statements. The response date in the subpoena was May 31, 2023, however, Weiner LLC has not responded to the subpoena. Accordingly, Plaintiffs now seek an order directing Weiner LLC’s to comply with the subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure. Plaintiffs’ proposed order to show cause is attached as Exhibit E to the Declaration of Josef Nussbaum.

II. BACKGROUND

On June 22, 2022, this Court entered a judgment in this case against Defendants Laura Christy LLC, Laura Christy Midtown LLC, and David Ghatanfard, jointly and severally, for an amount in excess of \$5 million. *See* ECF No. 324; Nussbaum Decl. ¶ 2. To date, the entirety of the judgment remains outstanding. *Id.* In Plaintiffs’ judgment collection efforts, we have become aware that Defendant/Judgment-Debtor Ghatanfard owns a portion of a new Valbella restaurant, Valbella at the Park LLC. *Id.* ¶ 3. Mr. Ghatanfard owns his portion of this Valbella restaurant via another LLC that he owns in whole or in part, namely, Oak Grove Road LLC. *Id.* ¶ 4. Specifically, Plaintiff was able to procure the operating agreements for Valbella at the Park LLC and OGR. *Id.* ¶ 5. The operating agreement for Valbella at the Park LLC indicates that “the purpose of the Company is to [...] operat[e] the restaurant known as ‘Valbella’ located at 3 Bryant Park [...].” *Id.* ¶ 6. That operating agreement further provides that Oak Grove Road LLC has a “percentage

membership interest” of 50% of Valbella at the Park LLC. *Id.* ¶ 7. The OGR operating agreement, dated February 26, 2021, states that “the purpose of [that] LLC is to own and operate a restaurant.” *Id.* ¶ 8. The agreement further provides that “The members of Oak Grove Road LLC at the time of the adoption of this agreement is David Ghatanfard.” *Id.* ¶ 9. In short, at the time of OGR’s formation in February 2021, Judgment-Debtor Ghatanfard owned 100% of OGR which owns 50% of Valbella at the Park.

In the related successor liability action, Plaintiff deposed Valbella at the Park’s Director of Operations, Rosey Kalayjian. *Id.* ¶ 11. Ms. Kalayjian testified that Larry Weiner and Bruce Daily (of Weiner LLC) provide accounting services for OGR. *Id.* ¶ 12. Accordingly, in furtherance of their judgment collections efforts, on May 16, 2023, Plaintiffs served Weiner LLC, the accountant for Oak Grove Road LLC, with a subpoena pursuant to Fed. R. Civ. P. 45. *Id.* ¶ 13; Nussbaum Decl., Ex. D (Subpoena). The subpoena directed Weiner LLC to produce documents in its possession relating to Oak Grove Road LLC by May 31, 2023. *Id.* ¶ 14. As that date has now passed and no documents have been forthcoming, Plaintiffs now seek an order compelling Weiner LLC to comply with the Subpoena. *Id.* ¶ 15.

III. ARGUMENT

Weiner LLC should be ordered to comply with Plaintiffs’ Subpoena seeking production. If a non-party does not produce documents in compliance with a subpoena, the District Court for the district where compliance is required may enter an order compelling the non-party to produce the subpoenaed documents. *See* Fed. R. Civ. P. 37(a)(1), 45(d)(2)(B)(i). Per Rule 45, the serving party is required to move to enforce a subpoena in “the court for the district where compliance is required for an order compelling production and inspection.” Fed. R. Civ. P. 45(d)(2)(B)(i). The Subpoena here seeks the production of documents at the offices of Plaintiffs’ counsel in Manhattan. *See*

Nussbaum Decl., Ex. D (Subpoena). Accordingly, because compliance is required in Manhattan, this request is properly brought in this Court. *See, e.g., JMC Rest. Holdings, LLC v. Pevida*, No. 2015 U.S. Dist. LEXIS 62374, at *5 (E.D.N.Y. May 12, 2015); *see also* Fed. R. Civ. P. 45(c)(1)(A) (providing that a subpoena may specify a “[p]lace of [c]ompliance” that is “within 100 miles of where the person resides, is employed, or regularly transacts business in person”). To date, Weiner LLC has not responded to the Subpoena. Accordingly, Plaintiffs’ respectfully request an order directing Weiner LLC to show cause why it has failed to comply with Plaintiffs’ Subpoena.

IV. CONCLUSION

For all the above reasons, this Court should order Weiner LLC to show cause why it should not be ordered to comply with the Subpoena. A proposed order directing Weiner LLC to show cause to that effect is submitted contemporaneously with this application as Exhibit E to the Declaration of Josef Nussbaum. Immediately after filing this application, Plaintiffs will serve Weiner LLC with the filed version of this application and the proposed order to show cause.

Dated: New York, NY
June 6, 2023

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